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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,637	02/24/2004	Leon Lumelsky	RE2000-03B	3746
34415	7590	05/22/2006	EXAMINER	
SYMANTEC/ FENWICK SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041			VU, MICHAEL T	
			ART UNIT	PAPER NUMBER
			2617	

DATE MAILED: 05/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/785,637	<b>Applicant(s)</b> LUMELSKY, LEON	
	<b>Examiner</b> Michael Vu	<b>Art Unit</b> 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 25-32, 57-63 and 77-81 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-32, 57-63 and 77-81 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### DETAILED ACTION

1. The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 2617.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**Claims 25-32, 57-63, 77-81** are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-53 of copending Application No. 09/685,715. Although the conflicting claims are not identical, they are not patentably distinct from each other because the invention of the pending claims encompasses a similar invention as recited in the copending claims, i.e., a terminal is pointing to access point in short-range with directional, omni-directional antennas with less bit error rate BER.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have in fact been patented.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 25-32, 57-63, 77-81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chuah (US 6,400,722) in view of Smith (US 6,009,124).

Regarding **claims 25, 57, and 77**, Chuah teaches a method for dynamically tuning a directional antenna of a wireless device (Fig. 2-5, C5, L60-67 to C6, L1-6) for communicating with an access point in a short-range wireless networking environment (Fig. 7, C12, L52-63), comprising the steps of: providing at least one wireless device (Fig. 2, #32 Laptop Computer); providing at least one access point (Fig. 2, #36 Access Point); establishing a network link between a selected one of the wireless devices and a selected one of the access points using the directional antenna of the selected wireless device (C7, L1-25, Directional Antenna which will be pointed toward the access point) and an omnidirectional antenna of the selected access point (C7, L1-25, Omni-

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directional antenna C6, L1-6); and setting a position of the directional antenna to **but is silent on** minimize a bit error rate along the established.

However, Smith teaches a high data rate communications network employing an adaptive antenna to achieve a minimum BER and maximum RSSI (Fig. 8, C9, L7-8).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Chuah, such that minimize a bit error rate along the established, to reduce or avoid the latency of the signal transmission.

Regarding **claims 26, 58, and 78**, The combination of Chuah/Smith teach a method according to claim 25, wherein the step of setting the position of the directional antenna further comprises the steps of: positioning the directional antenna at a plurality of angles toward the omnidirectional antenna; recording the bit error rate at each of the angles (Fig. 8, C9, L7-8 of Smith); and selecting one of the angles which exhibits a minimal value of the bit error rate to be the position of the directional antenna (C7, L1-25, Directional Antenna which will be pointed toward the access point of Chuah) and an omnidirectional antenna of the selected access point (C7, L1-25, Omni-directional antenna C6, L1-6) of Chuah,

Regarding **claims 27, 59, and 79**, The combination of Chuah/Smith teach a method according to claim 26, wherein the plurality of angles are selected by first locating an initial position beyond which communication using the directional antenna is not possible (not apply or pointed toward the access point (C5, L50-67) of Chuah.

Regarding **claims 28 and 60**, The combination of Chuah/Smith teach a method according to claim 25, further comprising the step of setting a power of transmission of

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the directional antenna to a minimum value required to communicate on the established link (Fig. 5, L51-67) of Chuah.

Regarding **claims 29, 61, and 80**, Chuah teaches a method according to claim 28, wherein the step of setting the power of transmission of the directional antenna further **but is silent on** comprises the steps of: setting the power of transmission to a default value; recording a bit error rate at the default value; successively reducing the power of transmission until connectivity is lost or the bit error rate crosses a threshold; and setting the power of transmission to be a value that results in the bit error rate staying below the threshold.

However, Smith teaches the predetermined RSSI threshold value or signal is programmed includes with bit error rate BER (C4, L18-41, C10, L19-31).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Chuah, such that comprises the steps of: setting the power of transmission to a default value; recording a bit error rate at the default value; successively reducing the power of transmission until connectivity is lost or the bit error rate crosses a threshold; and setting the power of transmission to be a value that results in the bit error rate staying below the threshold, to reduce the interference generated by the communication system and minimize the data/packet delay.

Regarding **claims 30 and 62**, The combination of Chuah/Smith teach a method according to claim 29, wherein the threshold is a maximum acceptable value for the bit error rate (C4, L18-41, C10, L19-31) of Smith.

Regarding **claim 31**, The combination of Chuah/Smith teach a method according to claim 25, wherein the selected wireless device is an extension point device (Hub/Router/Gateway/Bridge, Fig. 2) of Chuah.

Regarding **claims 32 and 63**, The combination of Chuah/Smith teach a method according to claim 25, wherein the selected wireless device is an end-user device (Fig. 2, Laptop Computer #32) of Chuah.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 25-32, 57-63, 77-81 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Vu whose telephone number is (571) 272-8131. The examiner can normally be reached on 8:00am - 6:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duc Nguyen can be reached on 571-272-7503. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Vu



**DUC NGUYEN**  
**PRIMARY EXAMINER**